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### Constitutional Change: Questions and Answers

Cooperative Extension South Dakota State University

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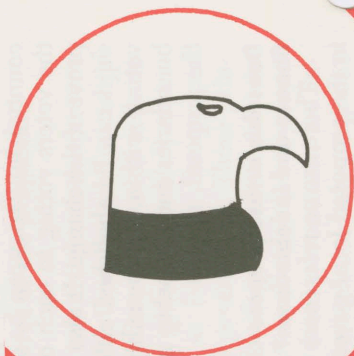
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# Constitutional Change

Questions and Answers

Cooperative Extension Service  
South Dakota State University  
U. S. Department of Agriculture



# Constitutional Change

FS 566

## Questions and Answers

By Claudia J. Lewis, intern, Constitutional Revision Commission; J. P. Hendrickson, head, Political Science Department, SDSU, and reviewed by Gordon Rose, Extension public affairs specialist.

On November 7, 1972, the people of South Dakota will have the opportunity to vote on four replacement articles to the South Dakota Constitution. This fact sheet provides information about these articles and the general constitutional revision effort of which they are a part.

### General Information

#### What is a state Constitution?

A state Constitution is similar to the national Constitution. It is a contract between the people and their government which provides guidelines by which state and local governments must operate. It sets up the basic framework for the structures and powers of state and local governments and it guarantees that the rights of the people will be protected.

#### Do we need to change South Dakota's Constitution?

The present South Dakota Constitution was adopted by the voters in 1889. It was written to meet the requirements and pressures of a new state, a state that was still very much a part of the frontier. Since its adoption 83 years ago the Constitution has been amended 79 times.

The idea of modernizing the Constitution is not a new one in South Dakota. As early as 1911, Governor Robert Vessey requested the Legislature to call a constitutional convention. Most of the recent Governors, including Mickelson, Anderson, Foss, Herseth, Gubbrud, Farrar, and Kneip, have actively supported constitutional revision efforts.

In 1954 a research group of seven state legislators stressed the fact that the Constitution had become "overlong and confusing and was replete with duplications and inconsistencies." They identified the following as changes that should be made: (1) the amount of detail should be reduced; (2) common subject matter should be put together; (3) confusing terminology needs clarification; (4) inconsistencies and errors should be removed; (5) omissions should be corrected.

#### Have other states been involved in similar efforts?

All but two states have had some constitutional revision activity in the last ten years. The most recent example is Montana, where the voters accepted a new state Constitution in June, 1972.

The whole picture of state government has changed dramatically in the last 100 years. In the late 1800's

people were concerned with survival, and their choice of government structures and functions reflected that concern. Now people want government to provide more and better services. State and local governments are involved in hundreds of federal grant programs and their budgets have increased enormously. There is no comparison between the demands placed on state and local governments today and those placed on them 100 years ago. The increasing interest in constitutional revision around the country is indicative of the problems faced when handling complex new demands under Constitutions written to meet the needs of the 19th Century.

#### What is South Dakota's approach?

Many states have attempted to revise their entire constitutions at state conventions and submit the entire product to a vote of the people. The South Dakota approach is to revise each article separately and to offer them a few at a time to the voters. This has allowed more time for careful study of each article as it is being prepared. It also gives the people the opportunity to analyze each article before they vote on it and to pass judgment on each of them separately.

#### What is the Constitutional Revision Commission?

The Constitutional Revision Commission was created by the Legislature in 1969 to conduct a comprehensive study of the Constitution and to recommend to the Legislature ways in which it could be improved and simplified. The Commission's comprehensive research into each of the articles before the voters this year combined an attempt to retain the good features in the present articles, to remove materials that were outdated, and to add new features deemed necessary by recent experience. The Commission's recommendations on four articles were presented to the Legislature in the 1972 Session.

#### What response did these proposals get from the legislature?

The recommendations of the Constitutional Revision Commission received overwhelming bipartisan support from both houses of the Legislature this year. With relatively minor changes, the proposals passed by wide margins in each house and were placed on the ballot for the November election.



## Specific Proposals

### **What are the replacement articles that will be before the voters in November?**

The articles to be voted on this year are intended to replace the present Executive, Judicial, Local Government, and Amendments and Revisions Articles. The voters will vote on each article separately.

In this section, significant features of each of these articles are discussed.

### **What are the significant features of the proposed Executive Article?**

A major purpose of the changes in the Executive Article is to give the Governor more flexibility. The goal is to improve efficiency in administering and overseeing the Executive branch. Changes that work toward that goal are the joint election of the Governor and the Lieutenant Governor, a four-year term of office, and the grant of power to reorganize the Executive branch.

The present Constitution does not require that the Governor and Lieutenant Governor run as a team. Joint election as a team would increase the probability that the person who succeeds the Governor in case of a vacancy would have the same political views as the person the people had elected to that office. It would also increase the probability that the Governor would delegate some of the routine ceremonial and administrative duties to the Lieutenant Governor. This would enable the Governor to spend more time on the important problems facing the state. Joint election has been adopted by 13 states since 1960.

Governors in 42 states are allowed a four-year term of office. South Dakota presently grants only a two-year term. The four-year term is proposed because it gives the Governor more time to develop and implement policies without constant interruption for campaigning. The Governor would be limited to two consecutive terms.

The proposal also gives the Governor power to reorganize the Executive Branch. The present Constitution does not extend this power. There are now 166 agencies, boards, and departments within the Executive Branch. The Governor, as head of the Executive Branch, is responsible to the people for the actions of these subdivisions. However, in the judgment of the Constitutional Revision Commission, the Governor is constitutionally handicapped in fulfilling this duty. The article seeks to correct this situation by giving him the power to organize these subdivisions into a more manageable grouping of principle departments.

A valuable safeguard against improper reorganization is included since either house of the legislature would have the power to disapprove any of the Governor's reorganization proposals.

### **Does this amendment change the method of selecting other constitutional officers?**

The Attorney General, Secretary of State, Auditor, Treasurer, and Commissioner of School and Public

Lands would continue to be elected to their offices by a vote of the people. Their terms of office, like those of the Governor and Lieutenant Governor, would be increased to four years. The Superintendent of Public Instruction would no longer be elected.

### **What are the significant features of the proposed Judicial Article?**

The purpose of the changes made in the Judicial Article is to streamline South Dakota's court system to provide a more efficient administration of justice. It would create what is called a unified court system, over which the Chief Justice is the administrative head. The unified court system would consist of a Supreme Court, circuit courts of general jurisdiction and courts of limited jurisdiction as established by the legislature. In this system, the Chief Justice would be given the power to assign circuit judges temporarily wherever they are needed around the state. This should prevent caseloads from piling up in one circuit when judges in another circuit have relatively little to do because of a light caseload. What this means is that the Chief Justice would temporarily assign a judge from the circuit that is ahead on its schedule to the circuit that is overloaded to help it catch up. It is a means of using existing court personnel to provide better service without increasing costs. If it is found that one circuit is constantly overloaded, the supreme court would have the authority to readjust circuit boundaries to ensure that all the people receive equal treatment before the law. The system also would increase efficiency by eliminating overlapping jurisdictions between courts.

A judicial qualifications commission is a new feature included in the proposal. Its purpose is to investigate complaints against justices and judges. On recommendation of this commission the Supreme Court, after proper hearing, could censure, disqualify, remove, or retire a judge or justice. Since 1966, two-fifths of the states have established these commissions.

Supreme Court and circuit court judges would be elected on a non-political ballot for terms of eight years.

### **What are the significant features of the proposed Local Government Article?**

This article would replace two articles in the present Constitution, those dealing with County and Township Organization and Municipal Corporations. It reflects the need to include two core principles which experience and tradition support as basic for the proper functioning of state and local government. These principles are: (1) All units of local government exist in large part for the administration of state law by local officials; and (2) all units of local government are instruments of self government which not only carry out directives from the state legislature but also determine local policies and design programs to solve local problems.

The proposal reflects a recognition of the need to free the people as much as possible to determine their own local government. In many states new approaches



are being used to increase the efficiency of local units of government and to increase their responsiveness to the needs of the people. Many different forms of city and county government are being tried. Cities and counties are working together in such areas as the joint development and use of jail facilities and police forces. Home rule is being tried. This amendment, in many ways, frees local units to try different approaches, if and when the people involved agree.

It would accomplish this in a number of ways. It would extend the right to adopt home rule to counties as well as to cities. The present Constitution grants it only to cities. Home rule would allow local units to decide for themselves what form of government they want to have. It would also free them to exercise any power not denied by the Constitution, their home rule charter, or the general laws of the state. Presently, without home rule, local units may exercise only those powers specifically granted by the Legislature.

The proposal also includes a new provision that allows all local government units to develop cooperative approaches to providing government services. Joint efforts might be tried, including the use of equipment and facilities, to achieve better use of the tax dollar.

A third response to the principle of local self government is that the proposal gives to the counties choices they do not now have in determining county government structure. The present Constitution requires that all counties have an elected clerk of the court, sheriff, county auditor, register of deeds, treasurer, state's attorney, and coroner. The proposed amendment does not require this. It would permit the people within each county to try other methods or to continue with this system if they prefer. This change recognizes that South Dakota has a wide variety of types of counties, and that the needs of each of these counties are different. The proposal would allow each county to adopt the form of county government that would best fit its needs.

#### **What guarantees are included to protect present county boundaries and township government?**

Section One of the proposal states explicitly that no county boundaries can be changed unless a majority of the voters voting in each of the counties involved approve of the change. It also states that no existing townships can be abolished unless a majority of the voters voting within the township approve. Existing county boundaries and township government are protected in the proposal.

#### **Does this article propose changes in local government finance and indebtedness?**

There are no references to finance and indebtedness in the proposed local government article. They will be considered by the Constitutional Revision Commission in its study of the articles on Revenue and Finance and Public Indebtedness.

#### **What immediate changes in local government would result if this article were adopted?**

The amendment does not force local governments to change at all. It simply provides the means by which the people within the different local units can make changes, if and when they want to. It respects the right of the people to determine their own local government as much as possible.

#### **What is significant about the proposed Amendments and Revisions Article?**

The goal of any amendments and revisions article is to allow the people a means by which they can exercise their right to change their state constitutions. Constitutions do become outdated, and the people must have a means to modernize them when necessary.

The significant change made by this proposal is that it allows the people to initiate the calling of a constitutional convention or the submission of a constitutional amendment for a vote of the general electorate. Presently only the Legislature can submit a convention call or an amendment to a vote of the people. This proposal reflects recognition of the ability of the people to recognize problems of government and initiate changes themselves without having to work through the legislature.

#### **Why should you be concerned about constitutional revision?**

The Constitution is a document written by and for the people. It sets up the basic framework by which the people intend to govern themselves. The goal of a state Constitution should be to permit the most efficient, responsible, and responsive state and local governments possible. Many South Dakotans feel the present Constitution no longer serves that goal. It was written 83 years ago by people concerned with problems very different from those facing people today.

Whether you are a farmer, housewife, businessman, or rancher, you are affected by government; and the Constitution very directly affects government. Ultimately, it is up to you to decide whether or not South Dakota needs to revise its Constitution.

#### **Where can you get more information?**

It is impossible to answer all your questions about constitutional revision in a publication of this size. If you would like more information ask your County Extension Agent for FS 567 on the Executive Article, FS 568 on the Judicial Article, FS 569 on the Local Government Article, and/or FS 570 on the Amendments and Revisions Article, or you may contact the League of Women Voters, local legislators or write to: Executive Secretary, Constitutional Revision Commission, c/o State Capital, Pierre, S. D. 57501.





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